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Ineffectiveness at Its Best: Fighting Terrorism with Economic Sanctions

Alan Einisman

INTRODUCTION

*I, William J. Clinton, President of the United States of America, find that the grave acts of violence committed by foreign terrorists . . . constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.*¹

One could argue that fighting terrorism is much like fighting a neighborhood bully: you have to come at him fast and hard, tit for tat. If you do not, the bully will keep coming back for your lunch money. Imagine if the victim were to say to the bully, "Bully, as punishment for your behavior, I will no longer hand over my money." Clearly, this would not change the bully's behavior. In essence, an economic sanction has the same effect on a terrorist.

In the opening quotation, President Clinton used understandably strong language: statistics show that terrorist acts are on the rise, and they are spreading across a wide geographical spectrum.² In 1998, terrorist bombs destroyed the American embassies in both Tanzania and Kenya. The bombs exploded within minutes of each other, killing over 263 people and injuring more than 5,000.³ Further, in January 1999, it was reported that four persons with alleged ties to the same group responsible for the African bombings were arrested in a plot to blow up U.S. consulates in India.⁴

1. Exec. Order No. 12947, 60 F.R. 5079 (1995).

2. See JEFFREY IAN ROSS, *DEMOCRATIC RESPONSES TO INTERNATIONAL TERRORISM* 27-30 (David A. Charters ed., Transnational Publishers, Inc. 1991). See also, *Report: Embassy Attacks Fuel Record Toll of Terrorism*, MINNEAPOLIS STAR TRIB., May 1, 1999, at A6 ("Terrorism took a record toll last year [1998], with 741 people killed and 5,952 injured.")

3. Michael Grunwald, *U.S. Complaint Links Bin Laden to Bombing*, WASH. POST, Aug. 29, 1998, at A1. See generally William Claiborne, *Bombs at 2 U.S. Embassies in Africa Kill 81; 8 Americans Among the Dead*, WASH. POST, Aug. 8, 1998, at A1 (explaining how embassies in Tanzania and Kenya blew up within minutes of each other).

4. See *Four Are Arrested in Alleged Plot to Blow Up U.S. Consulates in India*, MINNEAPOLIS STAR TRIB., Jan. 21, 1999, at A4. U.S. intelligence officials,

The United States spends approximately \$7 billion a year to combat terrorism,⁵ and this figure is expected to rise.⁶ On September 21, 1998, President Clinton addressed the United Nations and called for a global effort to combat terrorism.⁷ Announcing that combating terrorism was at the top of the country's agenda, he stated his intent to ask Congress for funds to strengthen American embassies.⁸ In his remarks, he suggested that the obligations of the U.S. in dealing with international terrorism are: "To give terrorists no support, no sanctuary, no assistance To bring pressure on states that do. To act together to step up extradition and prosecution. To sign the antiterror global convention."⁹ Clearly, terrorism is not exclusively an American or Western problem.¹⁰

While economic sanctions should play an important role in dealing with terrorist states,¹¹ alone they may be insufficient given the emergence of wealthy, independently financed terrorists. An example is Osama bin Laden,¹² the de facto "go-to" guy for this type of terrorist threat. He is widely acknowledged as the mastermind and financier of recent attacks against Americans abroad, including the aforementioned embassy attacks.¹³

however, found no link between the men arrested and bin Laden's organization. *Id.*

5. See John Diamond, *Use of Antiterror Funds Hard to Track, US Auditors Find*, BOSTON GLOBE, Sept. 28, 1998, at A3.

6. See *id.*

7. See *Clinton Tells U.N. That Global Effort Needed to Prevent, Punish Terrorism*, MINNEAPOLIS STAR TRIB., Sept. 22, 1998, at A8.

8. See *id.*

9. *Id.*

10. Terrorism is not a new phenomenon; in fact, some commentators have stated that modern terrorism has its roots in the French Revolution. See JOHN F. MURPHY, *STATE SUPPORT OF INTERNATIONAL TERRORISM* 4 (1989).

11. Beginning in the 1970's, sanctions played an important role in the America's attempt to curb international involvement in terrorism. Many federal statutes authorize the President to limit trade and economic relations with countries that the Secretary of State has determined support terrorism. See Murphy, *supra* note 10, at 69.

12. Osama bin Laden is a Saudi-born multimillionaire who uses his vast amounts of money to finance his terrorist network. See John F. Harris, *President Freezes Bin Laden's Assets; Clinton Targets Global Support*, WASH. POST, Aug. 23, 1998, at A1 ("Bin Laden, a Saudi millionaire . . . sponsors his terror campaign with a 'far-flung business empire,' that runs 'the gamut from agricultural companies to banking and investment firms, to construction companies'").

13. For detailed background information on bin Laden, see generally John Barry, Christopher Dickey & Steve LeVine, *Making a Symbol of Terror*, NEWSWEEK, Mar. 1, 1999, at 40 (detailing bin Laden's upbringing and general history).

He and his network of terrorists provide a perfect example of what one official has referred to as "a murky network of home-grown, privately financed and largely independent groups."¹⁴

This Note argues that the U.S. Government relies too heavily on economic sanctions when fighting terrorism. Section I provides background information, including a definition of terrorism and economic sanctions. Section II analyzes the effectiveness of economic sanctions in curbing terrorism. Finally, Section III suggests alternatives that the U.S. has at its disposal to deal with terrorism.

SECTION I – BACKGROUND

One of the most troublesome aspects of terrorism is the lack of consensus as to what exactly constitutes "terrorism." Accordingly, an examination of the terms "terrorism" and "economic sanction" is necessary.

A. TERRORISM DEFINED

An important problem that has plagued many scholars is that of defining exactly what terrorism is.¹⁵ For example, one may argue that there is really no difference between a terrorist and freedom fighter. The United States Congress defines an act of international terrorism as one "which is violent or dangerous to human life and that is a violation of the criminal laws of the United States . . . and which appears to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by assassination or kidnapping."¹⁶ The main problem with fighting terrorism is that terrorist groups are un-

14. David B. Ottaway, *U.S. Considers Slugging it Out with International Terrorism; Aides Split on Whether to Target Groups or States That Sponsor Them*, WASH. POST, Oct. 17, 1996, at A25.

15. For more detail, see Murphy, *supra* note 10, at 14-16 (explaining how the U.S. has defined terrorism in the past). Additionally, for a thorough discussion, see generally Liam G.B. Murphy, *A Proposal on International Legal Responses to Terrorism*, 2 *Touro J. Transnat'l L.* 67, 80-95 (1991) (discussing different definitions of terrorism).

16. The International Emergency Economic Powers Act § 14, 50 U.S.C.A. 1701 (1991). See also 18 U.S.C.A. § 3077 (1985), which defines a terrorist act as an activity that involves a violent or dangerous act towards human life which violates the laws of the United States or States. The act must appear to intimidate the civilian population or influence the policy of a government by intimidation, assassination or kidnapping.

like a country's military. Rather, they are small groups, which makes them hard to track, hard to infiltrate, and hard to stop.¹⁷

B. ECONOMIC SANCTIONS

In general, economic sanctions may be defined as "coercive measures taken against one or more countries to force a change in policies, or at least to demonstrate a country's opinion about the other's policies."¹⁸ Proponents of economic sanctions argue that sanctions are effective because they reduce the target country's economic welfare and thereby force that government's regime to give in and abandon its objectionable policy.¹⁹ Economic sanctions are ordinarily imposed in the form of trade embargoes, restrictions on imports and exports, denial of foreign assistance (including loans and investments), the freezing of foreign assets, and the prohibition of economic transactions between U.S. companies and the sanctioned state.²⁰

In general, there are three instances in which a government will employ economic sanctions.²¹ First, a single country or a group of nations will often impose sanctions against a country whose actions or policies endanger the economy or security of the sanctioning country or its allies.²² A second scenario is one in which the sanctioning country attempts to force its ideology upon the sanctioned country. An example of this would be the multilateral sanctions imposed on South Africa during its apartheid era.²³ Finally, sanctions are becoming an increasingly popular tool for dealing with trade policy and commercial relations.²⁴ For example, if a country implements a protectionist policy which puts a trading partner at an economic disadvantage, the harmed country might retaliate with sanctions. The

17. See Charles E. Schumer, *Terrorism Must Not be Allowed to Hide its Face*, 22 SYRACUSE J. INT'L L. & COM. 1, 1 (1996).

18. FOREIGN AFFAIRS AND NATIONAL DEFENSE DIVISION, CONGRESSIONAL RESEARCH SERVICE, ECONOMIC SANCTIONS TO ACHIEVE U.S. FOREIGN POLICY GOALS: DISCUSSION AND GUIDE TO CURRENT LAW (1997). Author David Baldwin states that some have defined the term "economic sanctions" as diplomatic pressure on other states that discourage trade with the targeted state. See DAVID BALDWIN, ECONOMIC STATECRAFT 35-36 (1985).

19. See WILLIAM H. KAEMPFER & ANTON D. LOWENBERG, INTERNATIONAL ECONOMIC SANCTIONS 161 (1992).

20. See FOREIGN AFFAIRS AND NATIONAL DEFENSE DIVISION, CONGRESSIONAL RESEARCH SERVICE, ECONOMIC SANCTIONS TO ACHIEVE U.S. FOREIGN POLICY GOALS: DISCUSSION AND GUIDE TO CURRENT LAW *supra* note 18, at 1.

21. See Kaempfer, *supra* note 19, at 1.

22. See *id.*

23. See *id.* at 1-2.

24. See *id.* at 2.

first and second forms are utilized by countries which use sanctions as a way of fighting terrorism: sanctions are imposed for both security and ideological reasons.²⁵

1. *Factors Used to Determine Whether Sanctions Are a Viable Option:*

Among the factors used to determine whether a country should use economic sanctions are: geographic proximity, trade volume, a country's wealth, and whether the country is a member of a common trading block.²⁶

Examples of the effect of geographic proximity on the success of economic sanctions are the U.S. sanctions and embargoes on Iran and Cuba. Due to Cuba's proximity to the U.S., the task of monitoring is inherently easier than it would be for a more distant country like Iran. The U.S. can keep a closer watch on what is going on in and around Cuba, while doing the same in Iran would require more supplies and more tax dollars.²⁷

Trade volume is also important. If the U.S. exports a large quantity of a given product to a country, sanctions or an embargo may not be the best option simply because the U.S. could harm its own industries, thus resulting in lost business, income, and tax revenue. Moreover, if the U.S. imports a large quantity of a given product, the damage to consumers might outweigh the rationale behind imposing sanctions.²⁸

25. Additionally, trade embargoes may be imposed on a country as part of a sanction. Embargoes can take the form of primary or secondary boycotts. A primary boycott involves a government prohibition of both importing and exporting. A secondary boycott involves the boycotting of third countries that deal with the targeted country, and serves as an attempt to limit the extent of business that third-party countries can do with a targeted country. For a more detailed discussion, see generally Raj Bhala, *National Security and International Trade Law: What the GATT Says and What the U.S. Does*, 19 U. PA. J. INT'L ECON. L. 263, 284 (1998) (detailing the role sanctions play in international trade).

26. See FOREIGN AFFAIRS AND NATIONAL DEFENSE DIVISION, CONGRESSIONAL RESEARCH SERVICE, *ECONOMIC SANCTIONS TO ACHIEVE U.S. FOREIGN POLICY GOALS: DISCUSSION AND GUIDE TO CURRENT LAW* *supra* note 18, at 4. See also, Gary Clyde Hufbauer, Kimberly Ann Elliott, Tess Cyrus & Elizabeth Winston, *U.S. Economic Sanctions: Their Impact on Trade, Jobs, and Wages* (visited Oct. 24, 1998) <<http://www.iie.com/catalog/wp/1997/sanction/sanctnwp.htm>> ("[B]ilateral trade will increase . . . if the two countries share a common border or a common language, or are both members of the same trading bloc.").

27. See Hufbauer, *supra* note 26 ("[T]he amount of trade between two countries will be . . . negatively related to the distance between them.").

28. In the 1970's, the Arab countries placed an embargo on oil, which led to a steep increase in prices of gasoline. See Bernard Wysocki Jr., *Essay: Oil*

An equally significant factor is wealth. If a country has a vast amount of it, like Saudi Arabia, the imposition of sanctions will have little impact due to the sheer amount of resources available to its government. On the other hand, sanctions have a more detrimental effect on the population of a poor country such as North Korea.²⁹

Finally, the United States is a member of many trading blocks, both regional³⁰ and international.³¹ Sanctions could violate existing trade agreements and subject the U.S. to retaliation. For example, if the United States were to impose sanctions on Mexico, and a dispute settlement panel finds that the sanctions were unwarranted, the Mexican Government could respond with an embargo on U.S. imports. This could hurt many American industries and corporations and have a potentially devastating effect on jobs. It is noteworthy that the North American Free Trade Agreement (NAFTA) incorporates GATT Article XI:1, which creates a violation whereby a dispute settlement panel can give a winning plaintiff the right to retaliate in a situation similar to the one mentioned above.³²

C. ECONOMIC SANCTIONS ARE FREQUENTLY USED TO IMPLEMENT U.S. FOREIGN POLICY GOALS

Sanctions, in all forms, are a frequently used tool to implement U.S. foreign policy goals. In fact, they are used so often that U.S. Senator Richard Lugar, a well-respected member of the Senate Foreign Relations Committee, has referred to them as an "epidemic."³³ Indeed, the U.S. has imposed sanctions 115 times since World War I, 61 in the last five years alone.³⁴ One commentator has stated that "whenever tensions rise, sanctions become the favorite tonic of American diplomacy."³⁵ Neverthe-

Megadeal Signals a World of Low Inflation, WALL ST. J., Dec. 2, 1998, at B1 (The Arab oil embargo of 1973 led to the quadrupling of oil prices.).

29. See *infra* note 84.

30. The United States is a member of the North American Free Trade Agreement (NAFTA), along with Mexico and Canada. See Preamble, NAFTA.

31. The United States is also a member of the General Agreement on Tariffs and Trade (GATT). See generally JOHN H. JACKSON ET AL., LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS (3d ed. 1995) (detailing GATT and other Agreements).

32. See *supra* notes 30-31.

33. David S. Broder, Editorial, *Sanctions Addicts*, WASH. POST, June 24, 1998, at A17.

34. See *id.*

35. Gary Hufbauer, *The Snake Oil of Diplomacy: When Tensions Rise, the U.S. Peddles Sanctions*, WASH. POST, July 12, 1998, at C1. See also Youssef M.

less, economic sanctions play an important role in the foreign policy of many nations, which routinely utilize sanctions in order to attain other objectives, such as national, strategic and economic goals.³⁶

With the use of sanctions skyrocketing, both the Clinton Administration and Congress have recently attempted to reform the Government's use of them.³⁷ The problem, some argue, is that there must be more authority and flexibility for the President. These critics cite as an example the mandatory sanctions that were imposed on India and Pakistan after their recent nuclear tests.³⁸ In that instance, the U.S. imposed sanctions immediately, pursuant to the Arms Export and Control Act,³⁹ even though it may not have been the best option available. Additionally, a bipartisan Senate panel has been established to deal with the over-use of economic sanctions. The panel's chair, U.S. Senator Mitch McConnell, explained that the panel's job is to balance America's economic interests with its desire to defeat terrorism.⁴⁰

D. CONGRESSIONAL ROLE IN COMBATTING TERRORISM

Congress has consistently played an active role in dealing with terrorism⁴¹ because of the variety of means it has at its

Ibrahim, *U.N. Votes, 157-2, in Nonbinding Referendum Against U.S. Embargo of Cuba*, N.Y. TIMES, Oct. 15, 1998, at A12 ("Congress has been sanction happy for some time.").

36. See Kaempfer, *supra* note 19, at 1.

37. See Broder, *supra* note 33. See also *U.S. Changes Humanitarian Aid Policy Towards Terrorist States*, MINNEAPOLIS STAR TRIB., Apr. 29, 1999, at A12 (explaining that the U.S. Government has eased sanctions on Iran, Libya and Sudan in an effort to lessen the harmful effect that sanctions often have on the citizens of a sanctioned country. The article states that this policy is part of a broader attempt at revising current U.S. sanctions policy.).

38. See Thomas W. Lippman, *Negotiations on Sanctions Open on Hill: Administration Seeks Broader Discretion on Imposition of Penalties*, WASH. POST, Sept. 9, 1998, at A24.

39. 22 U.S.C.A. § 2799aa-1 (1994). Sections 101 and 102(b) authorize the President to impose sanctions on a state when it detonates a nuclear explosive device or assists another country in obtaining the technology to do so. See also Determination No. 98-22, 63 F.R. 27665 (calling for the imposition of sanctions on India after the nuclear detonation). But see the India-Pakistan Relief Act, P.L. 105-277 (authorizing the President to waive the sanctions placed on these two countries).

40. See Lippman, *supra* note 38.

41. See *supra* note 16. In 1917, Congress passed the "Trading with the Enemy Act" which prohibits the United States Government and its citizens from trading with countries which the United States considers an enemy. The ban also included countries which were allied with America's enemies. 50 App. U.S.C.A. §§ 1-44, 40 Stat. 411. See also, Foreign Assistance Act of 1961 § 620H,

disposal.⁴² Many of the laws that it has enacted show that sanctions are not the exclusive means of response that a country may use in dealing with terrorism or any other threat to its security. This does not mean, however, that Congress' job is easy. While serving as a member of the U.S. House of Representatives, Senator Charles Schumer described terrorism as being invisible. By its very nature, he said, it lies concealed, strikes with stealth and surprise, and is directed against innocent and unprepared people.⁴³ These factors make it difficult for public policy makers to curb terrorism.

The Constitution grants Congress the power to lay and collect taxes and to provide for the general defense and welfare of the United States.⁴⁴ Simply put, Congress appropriates the funds for any proposed actions. Additionally, the Senate has the authority to give advice and consent to the President when dealing with international treaties.⁴⁵ This is important because if the U.S. wants to impose bilateral or multilateral sanctions on a terrorist-supporting country,⁴⁶ the President must first obtain the Senate's consent. Congress also has the powers to raise and

22 U.S.C. 2378 (1996) (prohibiting foreign assistance to countries that provide military assistance to terrorist states); Arms Export Control Act § 40A, 22 U.S.C. 2780 (1986) (prohibiting sale, transfer, lease, loan, grant, credit, or foreign assistance associated with munitions to terrorist states); International Security and Development Cooperation Act of 1985 § 505, 22 U.S.C. 2349aa-9 (1985) (authorizing the President to ban importation of goods and services from a state found to support international terrorism); International Financial Institutions Act § 1621, 22 U.S.C. 262p-4q (1996) (opposing international financial institution loans to terrorist states); Export-Import Bank Act of 1945 § 2 (b)(1)(B), 12 U.S.C. 635(b)(1)(B) (1945) (denying Bank support where the President determines that it is in the United States' best interests related to terrorism, nuclear proliferation, human rights and environmental protection). The Acts listed here are only a sample of the numerous pieces of legislation that Congress has passed.

42. Historically, Congress has used sanctions as a common response to incidences of terrorism by appropriating money and making laws to combat terrorism. See e.g., *supra* note 41.

43. Schumer, *supra* note 17, at 1.

44. See U.S. CONST. art. II, § 8, cl. 1. It is said that Congress has the "power of the purse." Congress appropriates funds to support programs.

45. See U.S. CONST. art. II, § 2, cl. 2.

46. Currently, the U.S. identifies Cuba, Libya, Iran, Iraq, North Korea, Sudan and Syria as countries that support terrorism. See Anne Q. Connaughton, *Exporting to Special Destinations: Terrorist-Supporting and Embargoed Countries*, 748 PLI/Comm 353, 368 (1996). However, the President may also sanction countries not included on this list. For example, President Clinton banned all commercial and financial dealings between the U.S. and the Taliban, Afghanistan's ruling militia, due to its refusal to extradite bin Laden. The executive order freezes the Taliban's assets in the U.S., bars Afghani imports, and makes it illegal for U.S. companies to sell goods or services to the Taliban. See

support armies⁴⁷ and to declare war.⁴⁸ Significantly, should the President decide to retaliate with armed force against a terrorist state or terrorist group, he may have to wait for formal approval from the Congress. While there are other relevant Constitutional powers that the House and Senate have at their disposal, the foregoing are significant because many times, a single branch of the U.S. Government may not be able to act unilaterally.

Furthermore, Congress may, in conjunction with the Executive Branch, take a proactive role and implement legislation that has a direct affect on terrorism. A recent illustration of this is the Iran and Libya Sanctions Act of 1996 (ILSA).⁴⁹ ILSA imposes sanctions on any foreign company or companies that invest in certain sectors of the Iranian or Libyan economies.⁵⁰ The purpose of ILSA is to stifle the flow of currency going into these terrorist-sponsoring states. It requires the President to impose two out of six types of sanctions on any country that violates the statute. They include: (1) A refusal of Import-Export Bank assistance for exports; (2) The denial of export licenses for goods and controlled technology; (3) A prohibition on U.S. institutions from making loans of more than \$10 million to the sanctioned government; (4) A prohibition on foreign institutions from acting as a dealer in U.S. debt instruments; (5) A prohibition on the U.S. government from acquiring goods or services from a sanctioned country; and (6) A restriction imports from the sanctioned country.⁵¹

E. STATE-SPONSORED TERRORISM

A dimension of terrorism that further complicates the issue is state-sponsored terrorism. State-sponsored terrorism may be defined as "the undertaking or encouragement by the authorities of a state, or the toleration by the authorities of a state of organized activities calculated to carry out terrorist acts in an-

John Lancaster, *Afghanistan Rulers Accused of Giving Terrorist Refuge; Clinton Bans Trading With Taliban Militia*, WASH. POST, July 7, 1999, at A15.

47. See U.S. CONST. art. II, § 8, cl. 12.

48. See U.S. CONST. art. II, § 8, cl. 11.

49. The Iran and Libya Sanctions Act of 1996, 50 U.S.C.A. § 1701 (West Supp. 1996).

50. Sanctions are imposed if the President determines that a business entity (which can be a person or a government acting as a business) invests, with knowledge, \$40 million or more. See *id.*

51. See *id.* §§ 6(2-6).

other state"⁵² An example of state-sponsored terrorism is Libya's involvement in numerous terrorist attacks in the 1980's,⁵³ where it has been alleged that the Libyan Government committed its own resources to attacks in Vienna, Rome, West Berlin and Pan Am Flight 103.⁵⁴ Many commentators and policymakers seem to view state-sponsored terrorism as a form of "low intensity warfare"⁵⁵ against the West. To illustrate, President Reagan said upon ordering the embargo of Libya that by providing support to terrorist groups which attack U.S. citizens, a country engages in armed aggression, just as if it had used its own forces.⁵⁶

Possibly the most common response to the state sponsorship of terrorism is the sanction.⁵⁷ Sanctions are largely unilateral measures imposed by the U.S. on a terrorist state.⁵⁸ Some commentators have posited that unilateral sanctions accomplish little because the sanctioned state is able to obtain goods from other countries or sources.⁵⁹ Conversely, others have cited South Africa as an example of how *multilateral* sanctions were effective in forcing the South African Government to change its apartheid policies.⁶⁰ One could argue that multilateral sanctions are more effective than unilateral sanctions because the sanctioned state will find it more difficult to obtain goods and services if they are isolated by a greater number of countries.

F. RATIONALES BEHIND THE USE OF ECONOMIC SANCTIONS

Imposing costs on a terrorist state may be the most customary rationale for using economic sanctions.⁶¹ The country imposing the sanctions links trade, foreign assistance, arms sales and other international economic transactions to modifications in the target state's behavior: if the targeted state acts in ways

52. Murphy, *supra* note 10, at 5.

53. See Dante B. Fascell, *Combating International Terrorism: The Role of Congress*, 16 GA. J. INT'L & COMP. L. 655, 656 (1986).

54. See *id.*

55. Kenneth W. Abbott, *Economic Sanctions and International Terrorism*, 20 VAND. J. TRANSNAT'L L. 289, 304 (1987).

56. See *id.* at 304-305 (President Reagan made these remarks when he ordered the embargo of Libya in 1986.).

57. See *id.* at 289-292.

58. See *id.* at 292.

59. See, e.g., *id.* at 305 (stating that sanctions are unlikely to reduce the economic capacity of the sanctioned state); see also Hufbauer, *supra* note 35 (sanctions seldom achieve the desired change).

60. See Hufbauer, *supra* note 35.

61. See Abbott, *supra* note 55, at 301.

considered inappropriate by the sanctioning state – by supporting terrorist activities, for example – the sanctioning state suspends those transactions, thus imposing costs on the target's economy.⁶² If the sanctions work, the sanctioning state will then permit normal relations to continue.⁶³

Additionally, sanctions are often viewed as a more peaceful means of achieving change than armed force.⁶⁴ One commentator theorized that sanctions are more effective than words at communicating the sanctioning country's commitment to a particular position, the earnestness with which it views any given foreign conduct, and its intention and willingness to act and bear costs. Sanctions can also communicate moderation and restraint, which could avoid unnecessary conflict.⁶⁵ Moreover, the U.S. State Department, in a 1986 report, called sanctions an integral part of peaceful measures that can be used to deter states from supporting terrorism and they may also be used to pressure targeted states to change their policies.⁶⁶

Some commentators argue, however, that as terrorist groups become self-reliant, sanctions imposed on states accomplish very little.⁶⁷ They posit that sanctioning terrorist-supporting states is probably ill advised,⁶⁸ arguing that embargoes are unlikely to have an effect on the capacity of a state to support terrorism.⁶⁹ It is because of this issue, the emergence of the self-reliant terrorist, that sanctions are less likely to have an impact on international terrorism.

SECTION II – ANALYSIS OF ECONOMIC SANCTIONS

As previously stated, the U.S. Government frequently uses economic sanctions to implement its foreign policy goals. One observer theorizes that the United States no longer has one enemy (communism) and therefore has to look for new measures to fight terrorism.⁷⁰ The problem is that the U.S. military was

62. See *id.* See, e.g., Pub. L. No. 104-208, § 527, 110 Stat. 3009 (1996) (If the President determines that a country grants sanctuary to or supports international terrorism, bilateral assistance will not be made available.).

63. See, e.g., The Iran and Libya Sanctions Act of 1996, § 8 (If Iran or Libya change their policies, renouncing terrorism, the sanctions cease to have affect. The President, however, must certify his findings to Congress first.).

64. See Murphy, *supra* note 10, at 69.

65. See Abbott, *supra* note 55, at 303.

66. See *id.* at 306.

67. See Ross, *supra* note 2, at 39.

68. See Abbott, *supra* note 55, at 305.

69. See *id.*

70. See Bhala, *supra* note 25, at 263.

designed to counter threats by China and the former Soviet Union, not to deal with the more unconventional threats by terrorists.⁷¹ Accordingly, the United States is increasingly inclined to use unilateral international trade measures regardless of opposition from its allies and trading partners.⁷²

Many argue that, despite their popularity, economic sanctions are ineffective in achieving their goals.⁷³ One observer said:

Most economists who have studied economic sanctions believe that sanctions are ineffective because they do not impose significant economic damage on the target nation. This reflects the traditional view that sanctions work by creating economic hardship in the target. According to this view, the typically small impact of sanctions is largely due to the efficiency of international goods and capital markets and the consequent ease with which target countries can find alternative sources of supply and alternative markets to substitute for the sanctioners.⁷⁴

A. ECONOMIC SANCTIONS ARE COSTLY

Each time a government imposes economic sanctions, there is a reciprocal effect on its own economy. Thus, when the United States imposes sanctions in the name of fighting terrorism, it does so at the expense of its own economy.⁷⁵ Indeed, the more countries that the U.S. targets, the more economic opportunity it loses. One recent study found that the U.S. sanctioned 30 countries between 1993-1996.⁷⁶ In a different study, the Institute for International Economics (I.I.E.) found that "U.S. sanctions in 1995 may have reduced U.S. exports to 26 target countries by as much as \$15 billion to \$19 billion . . . [T]hat would mean a reduction of more than 200,000 jobs in the relatively higher-wage export sector and a consequent loss of nearly \$1 billion annually in export sector wage premiums."⁷⁷ The U.S. Department of Commerce stated in a 1996 study that, in 1992, \$1 billion worth of goods or services exported supported 15,500 jobs, including the exporting firms and their suppliers.⁷⁸ The I.I.E. concluded that workers could have lost between \$800 million and \$1 billion in

71. *See id.*

72. *See id.*

73. *See Kaempfer, supra* note 19, at 2.

74. *Id.* at 3.

75. *See generally* Bhala, *supra* note 25, at 313-314 (explaining how the U.S. workforce loses money on exports and suffers job loss due to sanctions).

76. *See* Hufbauer, *supra* note 26.

77. *Id.*

78. *See id.*

export sector wages in 1995.⁷⁹ Significantly, these numbers suggest that the government loses a large amount of tax revenues.

Economic sanctions also affect U.S. firms *after* the sanctions have been lifted. In her comments before the Subcommittee on Trade of the House Ways and Means Committee, Kimberly Ann Elliott⁸⁰ stated that U.S. firms may be viewed as unreliable suppliers because the U.S. government is "sanctions-happy." The result is that countries may avoid buying from or doing business with U.S. companies, thus giving the U.S.'s foreign competitors an advantage in those lost markets.⁸¹ This is yet another reason why sanctions should be viewed skeptically as a means of fighting terrorism.

The frequency with which the U.S. government uses sanctions as a shield to stop terrorism is frightening, given statistics indicating that terrorist acts are on the rise.⁸² In light of the fact that American businesses bear the brunt of the seemingly ineffective sanctions and embargoes, the U.S. Government should reexamine its policy of using sanctions to combat terrorism. Is it worth the cost? Some might argue that in certain circumstances, it is. In most cases, however, it is not. The costs are too great and the payoff too small.

When a country imposes sanctions, the population of the targeted country will inevitably feel its effects in both economic and human terms. One writer aptly noted that "[i]f there is an economic impact on the targeted country, too often it is felt by its oppressed population, not the smug, well-insulated rulers."⁸³ The populations of North Korea and Iraq, two countries recognized by the United States as supporters of terrorism and accordingly sanctioned, have suffered greatly from starvation and disease.⁸⁴ Furthermore, during a recent trip to Cuba, another

79. See *id.*

80. In 1997, Ms. Elliott was a Research Fellow at the Institute for International Economics.

81. See Kimberly Ann Elliott, *Evidence on the Costs and Benefits of Economic Sanctions* (visited Oct. 23, 1998) <<http://www.iese.com/testimony/sanctns.htm>>.

82. See Ross, *supra* note 2 and accompanying text.

83. Broder, *supra* note 33.

84. Many news organizations have reported on the effects that sanctions have on a country's population. Specifically, the leaders of the targeted countries keep their citizens from obtaining food and other essentials. The government takes their remaining resources and either diverts them to the military or simply keeps them for themselves. See, e.g., David MacIntyre, *Missile With a Message: While North Koreans Starve, Kim Jong Il Shows Off His New Technology*, TIME, Sept. 14, 1998, at 55 ("famine has killed an estimated 2 million people in North Korean since 1995"); Bruce W. Nelan, *The Politics of Famine*

country on the receiving end of economic sanctions, Pope John Paul II stated that sanctions are always deplorable, because they hurt those most in need.⁸⁵ Again, the U.S. must consider whether the humanitarian costs on these populations are worth the imposition of sanctions that historically have had little effect on terrorism.

B. UNILATERAL SANCTIONS, OFTEN USED BY THE UNITED STATES, ARE INEFFECTIVE

*"Only if sanctions are universal, in the sense that all trading partners are united in a binding cartel agreement to refuse to sell or to buy any or most goods from the target country, will boycotts have a severe wealth-reducing effect."*⁸⁶

A 1996 report to the Carnegie Commission on Preventing Deadly Conflict reported that between 1914 and 1990, sanctions were imposed 116 times in attempts to change foreign policy goals.⁸⁷ These sanctions were successful in barely one-third of

Millions in North Korea Face Starvation; But Everyone Insists on Playing Cynical Games With Their Lives, TIME, Aug. 25, 1997, at 50 ("Pyongyang is trying to use its citizens' hunger as a bargaining chip, arguing that Washington should deliver massive food aid . . . The U.S. wants to make sure its aid is not being siphoned off to fatten the diet of North Korea's oversize, 1.1 million-strong army."); Mark Hosenball & Sarah Van Boven, *The Battle in the Aisles: A Black Market in Baby Formula in Iraq Leads to a Scam That Has Crack Addicts Shoplifting in Middle America*, NEWSWEEK, Dec. 8, 1997, at 41 ("Because of the gulf war and ensuing U.N. sanctions against a defiant Saddam Hussein, baby food is exceedingly hard to come by in Iraq; according to UNICEF, 32 percent of children under the age of 5 are seriously malnourished."); Marian Houk, *UN Weighs Evidence on Iraqi Nuclear Plans, Aid Needs*, CHRISTIAN SCI. MONITOR, July 17, 1991, at 3 (A U.N. special envoy who visited Iraq to assess the effects of sanctions on civilians stated that "the impact of sanctions had been, and remains, very substantial on the economy and living conditions of its civilian population . . ."). *But see supra* note 37 and accompanying text (sanctions are being eased on certain countries for humanitarian reasons).

It is important to note, however, that on September 18, 1999, the United States lifted its trade embargo on North Korea in exchange for North Korea's pledge to refrain from test-firing a long range missile. These developments are significant: most trade in consumer goods and raw materials will now be legal, U.S. airlines will now be able to land in North Korea, and U.S. companies will now be able to invest in North Korea. Only trade in goods that have a military use will be prohibited. *See* John Burgess, *U.S. Lifts Key Facets of N. Korea Embargo: Some Trade, Investment to Be Legal*, WASH. POST, Sept. 18, 1999, at A1.

85. *See* Hufbauer, *supra* note 26.

86. Kaempfer, *supra* note 19, at 21.

87. John Stremmlau, *Carnegie Commission On Preventing Deadly Conflict, Sharpening International Sanctions: Toward A Stronger Role For The United Nations* (visited Oct. 30, 1998) <http://www.cpcdc.org/pubs/summary/su96_01.html>.

the cases. The U.S. itself imposed 70 percent of all sanctions during that period, most of which were unilateral.⁸⁸ It therefore seems that unilateral sanctions are unsuccessful most of the time.

In addition to the foregoing, there are two additional important problems with unilateral sanctions: (1) they are difficult to enforce; and (2) the targeted country is able to get goods and supplies from a different country. Since 1970, only 13 percent of unilateral sanctions imposed by the U.S. achieved their stated foreign policy goal.⁸⁹ Importantly, there seems to be an increasing number of independently financed terrorist groups combined with less state involvement.⁹⁰ Osama bin Laden and Hamas are two examples of this trend. Neither group relies on direct or overt state support in its activities. Bin Laden is independently wealthy,⁹¹ while Hamas raises funds to carry out its operations.⁹² Indeed, imposing sanctions on a country may not have an effect on the secretive terrorist groups operating within its borders.

The United States' failure to consistently enforce its terrorist-related laws is a serious problem. Within the past few years,

88. *See id.* Unilateral sanctions are those sanctions which are imposed by one country against another. For example, the U.S. imposed sanctions against Sudan in November, 1997. In the executive order, President Clinton cited Sudan's sponsorship of international terrorism as a ground for the sanctions. *See* Exec. Order No. 13,067, 62 Fed. Reg. 59,989 (1997) (holding Sudan responsible for acts of international terrorism). *See also* Wynn H. Segall, *Running on Empty: Economic Sanctions and Export Controls in 1997*, 32 INT'L LAW. 271, 275 (1998) (stating that Sudan's sponsorship of terrorism was cited as a ground for the embargo in the executive order).

Conversely, multilateral sanctions are those which are imposed by two or more countries against another country. An oft-cited example of the success of multilateral sanctions is South Africa. Numerous countries imposed sanctions and embargoes on the South Africa in order to force its government to halt apartheid policies. *See* Hufbauer, *supra* note 27. Additionally, the Bonn Declaration is a multilateral agreement between the U.S. and six of its allies which attempts to halt bilateral air traffic to those countries that will not prosecute or extradite airplane hijackers. *See* Abbott, *supra* note 55, at 307.

89. *See* Elliott, *supra* note 81, at 2 and accompanying text.

90. Secretary of State Madeline Albright recently stated that while state sponsored terrorism continues to decline, the "progress has been countered by the rise of terrorist groups that are less directly dependent on states." *Report: Embassy attacks fuel record toll of terrorism*, MINNEAPOLIS STAR TRIB., May 1, 1999, at A6.

91. *See* Harris, *supra* note 12 and accompanying text.

92. Hamas, founded in 1987, is an Islamic militant group operating out of the West Bank and Gaza. For a more detailed discussion of Hamas, *see* Daniel Williams, *Hamas's Disarray Increases Dangers*, WASH. POST, Mar. 5, 1996, at A11 (explaining general background information on Hamas).

Congress enacted laws imposing secondary sanctions on foreign entities that do business with countries sanctioned by the U.S.: the Iran and Libya Sanctions Act (ILSA)⁹³ and the Helms-Burton Act.⁹⁴ These pieces of legislation are useless, however, unless there is some level of enforcement on the countries that violate the embargoes. The end result, in many cases, is that there is no enforcement. Most recently, three companies from three different countries violated ILSA by signing a contract to develop offshore gas fields in Iran.⁹⁵ Secretary of State Madeleine Albright found that the deal, which involved companies from France, Russia and Malaysia, met the criteria established by the law to receive sanctions. However, senior members of Congress pressured the Clinton Administration to waive the sanctions in order to avoid a trade war with Europe and to prevent a potential dispute with Russia.⁹⁶

Moreover, the Administration has been reluctant to take action against both the European Union and Canada, who continue to invest in Cuba, for violating the Helms-Burton Act.⁹⁷ For example, since its enactment, President Clinton has ordered two six-month suspensions of the law.⁹⁸ Quite simply, if the U.S. chooses to enact laws such as these, it must stringently enforce them or it runs the risk of acquiring an international reputation as a pushover. An apt critic has stated that "[i]f sanctions have any chance at all of producing favorable outcomes, they must be multilateral, they must be carefully formulated, and they must be vigorously enforced."⁹⁹

The main reason why unilateral sanctions do not work may be that targeted countries often have other means of obtaining the goods or services that are being denied to them by the sanctioning country. If the U.S. denies imports or exports to a targeted nation, there are numerous other countries willing to assist or deal with the targeted state. For example, when the U.S.

93. See *supra* notes 49-50 and accompanying text.

94. The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. § 6021, 110 Stat. 785 (1996).

95. See generally *Total-Led Group Investing \$2 Billion in Iranian Oil Field*, WALL ST. J., Sept. 29, 1997, at A19 (detailing the French company's plan to invest in Iranian oil).

96. See Thomas W. Lippman, *Politicians At Odds on Sanctions as Policy; Administration Says Tool Can Be Costly*, WASH. POST, May 19, 1998, at A17.

97. See Robert S. Greenberger, *U.S. Holds Up Cuba Suits, Pleasing Few, E.U. Coolly Accepts Delay for Helms-Burton Law; Canada Reacts Harshly*, WALL ST. J., Jan. 6, 1997, at A9.

98. See *id.*

99. Elliott, *supra* note 81.

unilaterally imposes sanctions on Iran and refuses to buy its oil, the end result is negligible because the U.S. is only one of many existing markets. Iran loses only America's business, which is obviously not enough to force a policy change. Further, Libya is the target of comprehensive unilateral sanctions by the United States, but the Libyan Government continues to sell approximately \$10 billion worth of oil to the Europeans each year.¹⁰⁰

A key to the success of sanctions is international cooperation to ensure that the targeted country cannot circumvent the sanctions. Indeed, if more nations are united in their resolve to apply sanctions, there will be a greater economic impact of those sanctions on the targeted nation.¹⁰¹ Most countries, however, will do what is in their own national interests, weakening the impact of unilateral sanctions.¹⁰² This makes it difficult to keep the sanctioned country from obtaining goods from another country, or from selling its goods to other countries, but there are other ways for targeted countries to escape sanctions. First, nations may simply choose not to take part in the international call for sanctions.¹⁰³ Second, a third-party nation can weaken the effectiveness of sanctions by allowing goods across its border to a sanctioned country.¹⁰⁴ Finally, covert cheating between the sanctioned country and another country, or within its own borders, can lessen the impact of sanctions on the target.¹⁰⁵

C. ECONOMIC SANCTIONS MAY UPSET U.S. ALLIES AND TRADING PARTNERS

The United States belongs to regional and international trading blocks,¹⁰⁶ and is therefore obligated under the commitments it has made to its trading partners.¹⁰⁷ These commit-

100. See Stremlau, *supra* note 87, at <http://ccpdc.org/pubs/summary/su96_03.html>.

101. See Kaempfer, *supra* note 19, at 16.

102. See DAVID E. LONG, INTERNATIONAL RESPONSES TO TERRORISM: NEW INITIATIVES 7 (Richard H. Ward & Ahmed Galal Ezeldin eds., 1990) ("There are too many conflicting interests at stake; for example, billions of dollars in trade with Libya would be lost by any country joining the United States in economic sanctions."). See, e.g., 11 MARTHA CRENSHAW, INST. FOR EAST-WEST SEC. STUDIES, TERRORISM AND INTERNATIONAL COOPERATION 25 (1989) ("Although the international community appears to recognize the need for cooperation against terrorism, national interests have dominated the treatment of the issue . . .").

103. See Kaempfer, *supra* note 19, at 66.

104. See *id.*

105. See *id.*

106. See *supra* notes 30 and 31 and accompanying text.

107. See JOHN H. JACKSON ET AL., 1995 DOCUMENTS SUPPLEMENT TO THE LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 17-60 (3d ed. 1995)

ments contain provisions which make it a violation for one contracting party to enact a domestic law which restricts the imports or exports of another contracting party simply because that country has policies different from its own.¹⁰⁸ Furthermore, when the U.S. implements secondary sanctions, as it does with ILSA and Helms-Burton, it runs the risk of alienating and upsetting its allies.

1. *The Helms-Burton Act + ILSA = Angry Allies and is a Violation of International Law:*

Both the Helms-Burton Act¹⁰⁹ and the ILSA¹¹⁰ have angered some of America's most important allies. The European Union,¹¹¹ Canada, and Mexico have all complained that the United States is really trying to tell the rest of the world what they can and cannot do.¹¹² With fervor, Congress enacted these laws in the name of combating terrorism, only to have the Clinton Administration waive certain provisions and enrage the aforementioned countries in the process.¹¹³ In other words, the

(pages 17-30 contain the General Agreement on Tariffs and Trade, as amended). The Articles of the General Agreement, as well as its Panel decisions, bind all contracting parties to the GATT treaty. For a historical overview of the GATT, see generally, Georgia McCullough Mayman, *The Iran Libya Sanctions Act of 1996: Enforceable Response to Terrorism or Violation of International Law?*, 19 Whittier L. Rev. 137, 144-159 (1997).

108. In the *United States - Restrictions on Imports of Tuna from Mexico* case, an appellate panel held that "a contracting party may not restrict imports of a product merely because it originates in a country with environmental policies from its own." 39th Supp. B.I.S.D. 155, para. 6.2 (1993). In a different appellate decision, the Panel found the United States guilty of employing arbitrary and discriminatory measures to coerce other contracting parties to protect sea turtles. The Panel said, "it is not acceptable, in international trade relations, for one WTO Member to use an economic embargo to require other Members to adopt essentially the same comprehensive regulatory program, to achieve a certain policy goal, as that in force within that Member's territory, without taking into consideration different conditions which may occur in the territories of those other Members." *United States: Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, para. 164 (1998).

109. See *supra* note 94 and accompanying text.

110. See *supra* notes 49-50 and accompanying text.

111. "The Europeans bitterly resent U.S. efforts to impose penalties on foreign companies and pressure other governments in order to promote U.S. foreign policy goals." Robert S. Greenberger, *Clinton, E.U. Ease Tension on Cuba Issue*, WALL ST. J., Apr. 14, 1997, at A3.

112. See Mayman, *supra* note 107, at 137 (this sentiment is from a French Foreign Ministry spokesman).

113. See generally Helen Cooper et al., *U.S. Ends Penalties Against Cuba Trade, Pact With E.U. Includes Iran and Libya, but Congress is Likely to Fight Move*, WALL ST. J., May 19, 1998, at A2 (detailing a possible change in the Clinton Administration's policy towards foreign companies who trade with Cuba).

United States views these laws as an important step in fighting terrorism,¹¹⁴ while their allies view them as violations of trade agreements and international law.¹¹⁵

The United States' trading partners also view these laws as "extraterritorial," meaning that the U.S. is imposing its laws on other sovereign nations.¹¹⁶ At one point, the European Union was prepared to bring a complaint before the World Trade Organization, but postponed after the U.S. waived a provision of Helms-Burton.¹¹⁷ In waiving the provision, President Clinton stated that he would continue granting waivers as long as America's friends and allies continue their efforts to promote democratic reforms in Cuba.¹¹⁸ Further, the Canadian International Trade Minister stated at one point that it is "unacceptable for the U.S. to foist its foreign policy onto Canada, threatening Canadian business and anybody else who wants to do business legally with Cuba."¹¹⁹ These two laws bring up an important issue: are they legal, as a matter of international law?

The international community has condemned the United States' approach as contrary to traditional international and treaty law.¹²⁰ In fact, several nations have retaliated against Helms-Burton and ILSA by enacting blocking laws that basically prevent their citizens and companies from complying with these laws.¹²¹ For example, Canada has enacted the Foreign Extraterritorial Measures Act, which forbids Canadian citizens and businesses from abiding by Helms-Burton.¹²² The argu-

114. Former U.S. Senator Alfonse D'Amato, a sponsor of the ILSA, stated that without the enforcement of the law, "[i]t will send a signal to others that they can do business as usual with Iran, at a time when Iran continues to . . . sponsor terrorist acts." *Id.*

115. A spokesman for a French company stated that ILSA is "a unilateral American law which isn't recognized in France or in the European Community." Greenberger *supra* note 95.

116. See Therese Raphael, *U.S. and Europe Clash Over Cuba*, WALL ST. J., Mar. 31, 1997, at A14. See also note 108 and accompanying text.

117. See Greenberger, *supra* note 111; see also Greenberger, *supra* note 97 (detailing the Clinton Administration's plan to appease its allies); see also *supra* note 94. Section 306 of the Helms-Burton Act gives the President the authority to suspend the implementation of the Act.

118. See Greenberger, *supra* note 97.

119. *Id.*

120. See Peter Glossop, *Canada's Foreign Extraterritorial Measures Act and U.S. Restrictions on Trade with Cuba*, 32 INT'L LAW. 93, 93 (1998).

121. See Harvey Oyer, *The Extraterritorial Effects of U.S. Unilateral Trade Sanctions and Their Impact on U.S. Trade Obligations Under NAFTA*, 11 FLA. J. INT'L L. 429, 430 (1997).

122. See generally Glossop, *supra* note 120, at 96-100 (explaining the law in detail).

ment is that the United States is violating international law, based on simple notions of sovereignty. The principle of sovereignty generally holds that a country has the power to enact whatever laws it deems necessary to govern its internal affairs, but it cannot enact laws which govern the internal affairs of *other* countries.¹²³ This is exactly what both ILSA and the Helms-Burton Act do and are thus considered contrary to settled principles of international law.

Rather than upset its allies with the threat of unilateral sanctions, the United States must endeavor to recruit these countries to join in issuing multilateral sanctions.¹²⁴ As stated, unilateral sanctions have had virtually no effect on terrorism. However, if the European Union and Canada were to join the United States in imposing sanctions, they might be more effective. At this point, it is not worth upsetting our allies over an ineffective policy.

2. *Trading-block obligations:*

As mentioned, the United States is a member of both GATT and NAFTA.¹²⁵ The rules and obligations that govern these Agreements bind the United States. Due to the commitments of member countries, barring Canada from conducting business with whom it wants may, in principle, violate NAFTA.¹²⁶ However, the U.S. justifies its actions in the name of national security.¹²⁷

Article XXI of GATT, the national security exception, states that any contracting party may take measures which it deems necessary to protect its national security interests.¹²⁸ The United States has argued that countries which engage in terror-

123. See Oyer, *supra* note 121, at 439.

124. For example, one recent GATT Appellate Body opined that, rather than force one country to comply with another's own policies via embargoes or sanctions, a country should attempt to form multilateral agreements if alternative measures are available (the U.S. should have attempted other agreements or cooperative efforts before imposing import bans). *United States: Import Prohibition of Certain Shrimp and Shrimp Prods.*, *supra* note 108, paras. 165-167.

125. See *supra*, notes 30 and 31 and accompanying text.

126. See Michael Wallace Gordon, *The Conflict of United States Sanctions Laws With Obligations Under The North American Free Trade Agreement*, 27 STETSON L. REV. 1259, 1277 (1998) ("[T]he entire tenor of the NAFTA is to further open trade where not specifically restricted, and that sanctions laws such as [Helms-Burton] violate the 'objectives' of [NAFTA]").

127. See generally Mayman, *supra* note 107.

128. See Jackson, *supra* note 106, at 46. For a comprehensive discussion of national security and international trade law, see Bhala, *supra* note 25.

ist activities pose a physical and economic threat to its security.¹²⁹ While this argument may be sound, the bottom line is that in the eyes of its trading partners, the United States is violating the trade agreements to which it belongs, like GATT and NAFTA.¹³⁰

Trade between the U.S. and Canada, America's second largest trading partner,¹³¹ is reported to be worth \$400 billion a year.¹³² Again, it is not worth angering our trading partners and allies over a scheme that does not work. The U.S. cannot single-handedly continue to sanction countries that promote terrorism. Terrorism is a global problem that requires a global response, and unilateral efforts are not accomplishing enough. There has been no significant change in Iran's policies, for example,¹³³ and all regimes are firmly in place despite the sanctions. The United States, instead of breaching its trading obligations and upsetting its allies, must rethink its approach to curbing terrorism.

D. STATE-SPONSORED TERRORISM IS DECLINING WHILE INDEPENDENT GROUPS ARE BECOMING MORE ACTIVE

An important issue in fighting terrorism is that the state sponsorship of terrorism is declining. In 1997, the former director of the Federal Bureau of Investigation stated that state-sponsored terrorism is on the decline, partly because of the fall of the former Soviet Union.¹³⁴ He also stated that independent terrorist groups are "proliferating and becoming a more serious threat than state-sponsored terrorism."¹³⁵ Furthermore, the U.S. Department of State has reported that state involvement in terrorism has declined, while groups not backed by any govern-

129. See Mayman, *supra* note 107, at 142.

130. As stated, many of America's most important trading partners, including the countries of the European Union, have criticized the United States' trade policies. See *supra* notes 111-113 and accompanying text.

131. See Editorial, *U.S. May Pay Penalty for Misguided Use of Bad Law Helms-Burton, aimed at Cuba, hits American trade ties*, L.A. TIMES, July 12, 1996, at B8 ("In seeking to slap the hands of a company in Canada, the United States hurts its own trade prospects.").

132. See *id.*

133. See Murphy, *supra* note 10, at 97.

134. See Editorial, *Anti-terrorist Efforts Better Coordinated*, SAN ANTONIO EXP.-NEWS, June 29, 1997, at 2J. See also *supra* note 89 and accompanying text.

135. Editorial, *Anti-terrorist Efforts Better Coordinated*, *supra* note 134.

ment are on the rise.¹³⁶ As one commentator stated: "[Now, the] enemy is a man, not a state, backed by acolytes, not armies."¹³⁷ With the exception of Iran, none of the other seven countries on the State Department's list of terrorist-supporting states¹³⁸ have been involved in a terrorist attack against Americans in years.¹³⁹

How can sanctioning a country work to prevent private groups from committing terrorist acts? This is a question which U.S. policymakers are attempting to grapple with. The problem is that these groups are stateless, and therefore out of reach of U.S. sanctions. Osama bin Laden's organization, for example, has no fixed headquarters or address.¹⁴⁰ Sanctions carried out on these independent groups are largely irrelevant because they are too blunt to pressure small groups.¹⁴¹ In other words, using sanctions to punish small, independent terrorist groups is the equivalent of trying to kill a mosquito with a wrecking ball. That said, what *can* the U.S. do to curb terrorist attacks? The following section presents some options that should be considered.

SECTION III – OPTIONS

The United States and its allies must review their policies toward curbing terrorism. As argued, economic sanctions are not the best option, but they may work *if* done correctly and in conjunction with other methods.

1. *Multilateral sanctions*

It has been said that the ability of terrorists to commit crimes in one country with weapons from another country against citizens of a third country and flee yet to fourth country, means that a unilateral terrorist policy raises serious

136. See Holger Jensen, Editorial, *Searching for the Bombers; Plot to Strike U.S. Embassies Probably Came from Outside Africa*, SACRAMENTO BEE, Aug. 11, 1998, at B7.

137. Tim Weiner, 'War on Americans' is Declared, DENVER POST, Aug. 23, 1998, at A1.

138. See *supra* note 46 and accompanying text.

139. See Weiner, *supra* note 137.

140. See *id.* See also Thomas W. Lippman, *Taliban Says Bin Laden in Its Sector of Afghanistan; Admission Comes Days After U.S. Sanctions*, WASH. POST, July 9, 1999, at A25 (stating that bin Laden frequently moves from camp to camp in the Afghani Desert).

141. Abbott, *supra* note 55, at 306.

problems.¹⁴² States should rely heavily on international cooperation in order to have an effective policy.

Multilateral sanctions are more effective than unilateral sanctions because they prevent the targeted country from obtaining goods and services from other venues. Multilateral sanctions may not work if the terrorist group moves from state to state. However, if the group resides and trains in a single country, as Osama bin Laden did in Afghanistan, multilateral sanctions could be imposed to force that country's government to either arrest the terrorists or extradite them for trial. Finally, multilateral sanctions show international unity, as they did in South Africa during the apartheid era and throughout the Gulf War in 1990 and 1991. The benefit of unity is that these terrorist organizations will run into a brick wall, rather than a mere brick.

2. *Armed response*

It seems to have become more acceptable to counter terrorism with armed response than it was in the past. For instance, President Reagan ordered attacks against Libya after a series of terrorist bombings against American interests.¹⁴³ More recently, President Clinton ordered attacks against Osama bin Laden's terrorist bases in Afghanistan.¹⁴⁴ In fact, it has been reported that this strike was the largest military action ever taken by a country against a private individual.¹⁴⁵ Shortly after the bombing, Defense Secretary William Cohen stated that the "strike against terrorist facilities in Afghanistan and Sudan should not be seen simply as a response to the August 7 bombings [of the American embassies in Africa], but as the long-term, fundamental way in which the United States intends to combat forces of terror."¹⁴⁶

The actions by President Clinton and the statements by Secretary Cohen signal a change in America's policy towards terrorism. In taking a more aggressive and controversial stance,

142. See Martha Crenshaw, *Unintended Consequences: How Democracies Respond to Terrorism*, 21-FALL FLETCHER F. WORLD AFF. 153, 159 (1997).

143. See Jim Hoagland, Editorial, *One Raid In a Long War*, WASH. POST, Aug. 23, 1998, at C7.

144. See generally Guy Gugliotta and Juliet Eilperin, *Tough Response Appeals to Critics of President; Several Question Clinton's Timing of Raids*, WASH. POST, Aug. 21, 1998, at A17 (outlining the U.S. raids on bin Laden's bases).

145. See Barry, *supra* note 13.

146. William S. Cohen, *About Last Week: The Policy: We Are Ready to Act Again*, WASH. POST, Aug. 23, 1998, at C1.

America's policy will begin to resemble those of other countries that deal with terrorism on a more regular basis. Some governments, such as that of Israel, have a policy calling for an immediate response to terrorist acts against its citizens and interests. Since 1953, the Israeli position has been that immediate retaliation is a necessary aspect of self-defense.¹⁴⁷ While this view has been criticized,¹⁴⁸ it does put potential terrorists on notice: if you attack our citizens or our interests, you will face severe consequences. The fact that the U.S. will now retaliate against both terrorist-supporting states¹⁴⁹ and host countries¹⁵⁰ signals a very important change, not only in policy, but also in America's evolving views on terrorism. In addition to the Clinton Administration,¹⁵¹ both the Nixon and Reagan Administrations argued that the right to strike at governments that offer sanctuary to terrorists is rooted in international law.¹⁵² Indeed, according to traditional principles of international law, every nation possesses the inherent and sovereign right of self-defense.¹⁵³ Thus, if a country were to retaliate against another, either for harboring a terrorist or sponsoring the act itself, the retaliatory action should not be viewed as aggressive. Rather, it should be viewed as a duty owed to its citizenry: when our interests are targeted

147. See William V. O'Brien, *Reprisals, Deterrence and Self-Defense in Counterterror Operations*, 30 VA. J. INT'L L. 421, 421 (1990).

148. Armed force can often times start a sort of cat and mouse game, whereby the terrorist group attacks a country, the country responds with force, and the terrorist group attacks again, starting a cycle. Martha Crenshaw stated that the use of force often backfires: "[T]he use of force . . . provides a motive for future revenge on the part of [terrorist] groups." Crenshaw, *supra* note 142, at 159 (1997). See also Murphy, *supra* note 15, at 79 ("Force is not a long-term solution to terrorism. A State responding with force opens itself up to retaliation and escalation.").

149. As previously stated, President Reagan bombed Libya in retaliation for terrorist attacks against American targets. More recently, President Clinton ordered the bombing of a factory in Sudan, which allegedly had been manufacturing chemical weapons.

150. See *supra* note 146 and accompanying text regarding the raids on Afghanistan and Sudan.

151. Richard Clark, President Clinton's coordinator for counterterrorism, recently stated, "We may not just go in a strike against a terrorist facility; we may choose to retaliate against the facilities of the host country, if that host is a knowing, cooperative sanctuary." *U.S. asserts right to bomb regimes that harbor terrorists* (visited Feb. 8, 1999) <<http://dodglobe.com/stories/020899/new-02899017.shtml>>.

152. See *id.* The theory is that the enemy – the terrorist – is using a neutral country as a safe-haven.

153. See Wallace F. Warriner, *The Unilateral Use of Coercion Under International Law: A Legal Analysis of the U.S. Raid on Libya on April 14, 1986*, 37 NAVAL L. REV. 49, 56 (1988).

by terrorists, we will defend ourselves. This could be viewed as a legal duty under international law.

Finally, it should be noted that fighting terrorism can be analogized to fighting a war: it is combat.¹⁵⁴ Where American citizens and interests are threatened, it is the government's responsibility to act; the United States has a right to defend itself. Again, while multilateral sanctions *can* play a role in keeping states from harboring or supporting terrorists, they are too weak an instrument standing alone.

3. *Change U.S. law: make assassinations, in extreme situations, legal once again:*

It has been argued that assassination may "offer the best available remedy" in combating terrorism.¹⁵⁵ This opinion is based on the right of every nation to defend itself.¹⁵⁶ In 1975, however, President Gerald Ford issued an executive order stating, "No person employed by or acting on behalf of the United States shall engage in, or conspire to engage in, assassination."¹⁵⁷ Despite this executive order, the Clinton Administration has quietly asserted that it may have a legal right to assassinate leaders and members of terrorist organizations.¹⁵⁸ The Administration argues that even the United Nations believes that every nation has the right to defend itself.¹⁵⁹ Moreover, a nine-year old U.S. Army memorandum states, "[t]he clandestine, low visibility, or overt use of force against legitimate targets in time of war, or against similar targets in time of peace, where such individuals or groups pose an immediate threat . . . does not constitute assassination."¹⁶⁰

154. A duo of authors, in a letter to the L.A. Times stated that "it is an error to view international terrorism as less than a profound problem, contingency planing worthy of real warfare must start." Robert H. Kupperman & Jeff Kamen, Opinion, *The Tough Approach to Counter Terror*, L.A. TIMES, Aug. 13, 1989, at 1.

155. Louis R. Beres, *The Permissibility of State-Sponsored Assassination During Peace and War*, 5 TEMP. INT'L & COMP. L. J., 231, 249 (1991).

156. See generally *id.* (explaining his view on the right of self-defense).

157. Exec. Order No. 12,333, 3 C.F.R. 200 (1981).

158. See Paul Richter, *Clinton Administration Reserves Right to Assassinate Terrorists*, MINNEAPOLIS STAR TRIB., Oct. 30, 1998, at A23.

159. See *id.* Also, Article 51 of the United Nations Charter states that "[nothing] in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations . . ." U.N. CHARTER art. 51. See also Beres, *supra* note 155, at n.45 and accompanying text.

160. *Id.*

This view may have support on Capitol Hill, as well. U.S. Senator Charles Robb has stated that the Clinton Administration should consider changing the executive order banning assassinations.¹⁶¹ Still, this view is controversial. Assassination may violate international norms,¹⁶² and go against what the United States stands for.¹⁶³ Additionally, by using assassination to combat terrorism, the U.S. could, in essence, be using terrorist-type methods itself.¹⁶⁴ The problem remains that one cannot negotiate with terrorists.¹⁶⁵ Terrorists hardly have offices worldwide and employees skilled in the art of diplomacy. Many, if not all, of these terrorists are willing to give their lives for their "cause."

The issue thus becomes one of what a nation can do to preempt a potential attack. While one cannot outrightly condone the use of assassination, it is probably justified in certain situations. For example, if the Central Intelligence Agency learns that another embassy has been targeted for an attack, the United States would be justified in assassinating the leaders of the terrorist organization and those who would carry out the attack. This is nothing more than self-defense.

4. *International criminal tribunal:*

A final significant problem in fighting terrorism is the absence of uniform laws addressing how to bring terrorists to justice. Each country has a different judicial system and treats criminals differently. A good example of this problem is the ongoing debate over how to bring to justice the two Libyan agents who are said to be responsible for the bombing of Pan Am 103.¹⁶⁶ Over 10 years after the bombing, the men known to be

161. See Justin Blum, *Altering Assassination Ban Might Increase Pressure on Saddam Hussein*, Robb Says, WASH. POST, Feb. 19, 1998, at A22.

162. See *id.*

163. See *id.*

164. See J.F.O. McAllister, *Should We Just Kill Him? As Tempting As It May Be, Assassination Is A Bad Idea*, TIME, Nov. 24, 1997, at 48.

165. One commentator stated that "[n]egotiation with any terrorist, whether state-sponsored or not, is problematic because that arena is eschewed in many countries on the grounds that it lends legitimacy to terrorist causes. In addition, since terrorist groups are not structured like states, they are incapable of negotiating effectively or enforcing their agreements." Murphy, *supra* note 15, at 72.

166. In 1988, a Pan Am flight blew up over Lockerbie, Scotland. The men responsible – two Libyan agents – have yet to be brought to justice. Both the United States and Great Britain have been struggling with the Libyan Government over how to assure the agents a fair trial. For an example of this dilemma, see generally Lee Michael Katz, *U.S.: Libya acceptance 'falls short'*,

responsible have not yet been tried or punished. This is precisely the type of issue, proponents argue, that requires the establishment of an international criminal tribunal. It is important to note, however, that on April 5, 1999, the two Libyan agents believed to be responsible for the Pan Am bombing were sent to the Netherlands to stand trial at The Hague.¹⁶⁷ While this may be viewed in a positive light, it also underscores the importance of international cooperation in bringing terrorists to justice. Indeed, it also shows that without a tribunal, even if terrorists are tried, it requires a great deal of patience.

Existing law enforcement measures are problematic. Once a terrorist is captured, a state generally has three options at its disposal: release the terrorist, extradite the terrorist, or simply refuse to extradite and prosecute the terrorist within the capturing state.¹⁶⁸ Under conventional international law, no sovereign state has an affirmative duty to extradite a person within its territory to another country if no extradition treaty exists between them; the treaty is the source of the extradition policy.¹⁶⁹ An international criminal tribunal could therefore be used to fight terrorism provided that it is given enough leeway and sufficient powers with regard to jurisdiction so that sovereign countries may resolve enforcement issues.¹⁷⁰

The establishment of an international criminal court fits well with the expansion of global trade. The view that the world is becoming increasingly interrelated, via a global economy, could be the impetus behind the founding of this type of court. There seems to be recognition within the international community that certain crimes contain "transnational components" that threaten world stability.¹⁷¹ The general consensus that is widely accepted is that there exist certain limited circumstances under which one should be held accountable to the international

USA TODAY, Aug. 27, 1998, at A1 (explaining the differing views between the U.S., Britain and Libya).

167. See Helen Cooper, *Libya Hands Over Pan Am 103 Suspects, As U.N. but Not U.S. Suspends Sanctions*, WALL ST. J., Apr. 6, 1999, at A28. In what was called an unusual arrangement, the two suspects will be tried under Scottish law at The Hague and would serve any sentence in Glasgow.

168. See Murphy, *supra* note 15, at 72-73 and 99.

169. See *id.* at 73. This is precisely the argument made by the Taliban in Afghanistan: because we have no extradition policy with the U.S., we are under no duty to extradite bin Laden, even if he were under our control. See *Taleban [sic] Refuses to Extradite Bin Laden*, WASH. TIMES, July 11, 1999, at C12.

170. See Murphy, *supra* note 15, at 72-73 and 99.

171. Bryan F. MacPherson, *Building an International Criminal Court for the 21st Century*, 13 CONN. J. INT'L L. 1, 3 (1998).

community for violating international laws.¹⁷² Few would argue that terrorism does not fall under this view. Again, with many trade organizations in place, both regional and international, now seems to be an opportune time to establish an international criminal tribunal. Trade agreements foster a true international community, based primarily on the shared desire for a strong economy. In light of this, there may be a nexus between a strong global economy and the desire for status quo. In other words, let's not rock the boat when things are going well. Terrorists are committed to disruption; having an unbiased international tribunal could ease many potential international problems.

CONCLUSION

Secretary Cohen aptly stated that it is impossible for a government to guarantee the full safety of its citizens at home and abroad. But no government, he says, can allow others to attack its citizens with impunity if it hopes to retain the loyalty and confidence of the citizens it is charged to protect.¹⁷³ The use of unilateral sanctions to combat terrorism simply does not work because they are too broad an instrument. However, multilateral sanctions used in conjunction with other methods, such as those mentioned above, have a much better chance of curbing international terrorism.

The United States, and the rest of the world, can no longer afford to wait until after a terrorist attack occurs. The policy towards terrorism must be one of aggressive proactivity. Indeed, economic sanctions have become a less valuable weapon due to the emergence of the independent terrorist network. Economic sanctions should be viewed as a link in a chain: they are weak standing alone, but work well if combined with other means.

172. *See id.* at 4.

173. *See* Cohen, *supra* note 146.